

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BRACCO DIAGNOSTICS, INC.

Plaintiff,

v.

AMERSHAM HEALTH, INC., et al.,

Defendants.

Civil Action No. 03-6025(FLW)

ORDER

THIS MATTER having been opened to the Court by Plaintiff Bracco Diagnostics, Inc. (“Bracco”), through its counsel Donald L. Rhoads, Esq., on Motions to Amend this Court’s Opinion and Order dated March 25, 2009; it appearing that Defendants Amersham Health Inc., Amersham Health AS, and Amersham PLC (collectively “GEH”), through their counsel Richard L. DeLucia, Esq., having submitted opposition thereto; it appearing that GEH also moves to amend this Court’s Opinion and Order with respect to the amount of corrective advertising damages awarded to Bracco; it appearing that GEH also moves to strike Bracco’s Reply Brief which includes a request for additional corrective advertising costs; it appearing that Federal Rules of Civil Procedure 52(b) provides that “[o]n a party’s motion filed no later than 10 days after entry of judgment, the court may amend its findings-or make additional findings-and may amend the judgment accordingly;” it appearing that according to Rule 59(b) of the Federal Rules of Civil Procedure, a party may seek to amend or alter a judgment within ten days of its entry; it appearing that a motion to amend a court’s findings is not an opportunity to “relitigate old issues, to advance new theories, or to secure a rehearing on the merits,” Gutierrez v.

Ashcroft, 289 F. Supp. 2d 555, 561 (D.N.J. 2003) (citation omitted); it appearing that Bracco seeks to amend several factual findings this Court made in its Opinion; it appearing that Bracco also seeks prejudgment interest on its award for corrective advertising costs; it appearing that under the Lanham Act, prejudgment interest is generally reserved for those cases that are deemed “exceptional,” Callaway Golf Co. v. Slazenger, 384 F. Supp. 2d 735, 748-49 (D. Del. 2005) (quoting American Honda Motor Co., Inc. v. Two Wheel Corp., 918 F.2d 1060, 1064. (2d Cir.1990)); Buzz Off Insect Shield, LLC v. S.C. Johnson & Son, Inc., --- F. Supp. 2d ---, No. 05-363, 2009 WL 618246, at *16 (M.D.N.C. March 6, 2009) (finding that “§ 1117(a) does not expressly provide for prejudgment interest, and even if prejudgment interest were recoverable under § 1117(a), this Court has concluded that this case is not an “exceptional case” under the Lanham Act.”); it appearing that in deciding that GEH had violated the Lanham Act, the Court did not deem the case “exceptional;” it appearing that the Court, in awarding Bracco corrective advertising damages in the amount of \$11.4 million, based its decision on the record presented at trial; for the reasons stated on this date, and for good cause shown;

IT IS on this 4th day of June, 2009,

ORDERED that GEH’s Motion to Strike Bracco’s Reply Brief is **GRANTED**; it is further

ORDERED that the heading on Page 90 of this Court’s Amended Opinion shall now read “Mr. Pines’ Testimony Relating to FDA Guidelines Is Relevant;” it is further

ORDERED that the Court’s March 25, 2009 Order shall be amended to included the following: “**ORDERED** that the Fourth Count of Plaintiff’s Complaint for negligent misrepresentation, upon the consent of Bracco, shall be dismissed with prejudice;” it is further

ORDERED that besides the aforementioned changes, Bracco’s Motions to Amend this Court’s Opinion and Order are **DENIED**; it is further

ORDERED that GEH's Motion to Amend this Court's March 25, 2009 Order with respect to the amount of corrective advertising damages is **DENIED**; it is further

ORDERED that Bracco's Request for pre-judgment interest is **DENIED**; it is further

ORDERED that an Amended Opinion and Order consistent with this Order shall be filed on this date; and it is further

ORDERED that except as otherwise ordered herein, all provisions of the March 25, 2009 Order remain in effect.

s/ Freda L. Wolfson
The Honorable Freda L. Wolfson
United States District Judge